

DANIEL S. WEISS (State Bar No. 91930)
LAW OFFICES OF DANIEL S. WEISS
2277 Fair Oaks Blvd., Suite 495
Sacramento, California 95825
Telephone: (916) 569-1610
FAX No.: (916) 569-1612

Attorney for Creditor
LAWRENCE KAHN

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:	)	Case No. 09-35610-A-7
)	
NATALIE ELAINE PIERCE,	)	DCN: DSW-001
)	
Debtor.)	
)	
_____ LAWRENCE KAHN,	)	[11 USC §362 and BR 4001]
)	
	)	LBR 4001-1 & 9014-1(f)(2)
Movant,)	
	)	DATE: August 31, 2009
v.	)	TIME: 9:00 a.m.
	)	DEPT: A
NATALIE ELAINE PIERCE,	)	501 - I Street,
	)	Sacramento, California
Respondent.	)	Courtroom 28 - 7 th Floor
_____)	

MOTION TO CONFIRM LACK OF AUTOMATIC STAY, OR,
IN THE ALTERNATIVE, FOR RELIEF FROM AUTOMATIC STAY

NOW COMES LARRY KAHN, ("Movant") in the above entitled matter, by his attorney, Daniel S. Weiss, and, in support of its Motion to Confirm Lack of Automatic Stay, or, in the alternative, for Relief from the Automatic Stay of Section 362 of the

1 Bankruptcy Code, represents unto the Court as follows:

2 1. This Court has jurisdiction over this proceeding
3 pursuant to 11 USC Section 362 and 28 USC Section 157, and this is
4 a core proceeding within the definition of 28 USC Section 157(b).

5 2. Debtor is the owner of real property situated at 972
6 Dunstone Drive, Oroville, California 95966.

7 3. Movant is the holder of a deed of trust against the
8 above-described real property.

9 4. On April 15, 2009, Debtor filed a Chapter 13 petition in
10 Case No. 09-21706-13-D-13L.

11 5. On May 8, 2008, Movant had filed a Motion for Relief
12 from Automatic Stay. The Court is hereby requested to take
13 judicial notice of the Motion, the Declaration of Lawrence Kahn in
14 support of the Motion (including the description of the property
15 and deed of trust which are the subjects of the Motion), and the
16 Movant's Information Sheet in support of the Motion. This Motion
17 was scheduled to be heard on June 9, 2009.

18 6. That Chapter 13 case was dismissed on May 28, 2009, due
19 to the debtor's failure to file information required by the
20 Bankruptcy Code, including a certificate of credit counseling,
21 Schedules A-J, Statement of Financial Affairs, Statistical
22 Summary, Summary of Schedules, Form 22C and Chapter 13 Plan.

23 7. On June 11, 2009, Movant's Motion for Relief from Stay
24 was denied as being moot, due to the dismissal of the Chapter 13
25 case.

26 8. On June 5, 2009, Debtor filed a Chapter 7 Petition in
27
28

1 Case No. 09-31434-A-7.

2 9. On June 9, 2009, Movant filed another Motion for Relief
3 from the Automatic Stay, which was scheduled to be heard on July
4 6, 2009. The Court is hereby requested to take judicial notice of
5 the Motion, the Declaration of Lawrence Kahn in support of the
6 Motion, and the Movant's Information Sheet in support of the
7 Motion.

8 10. On July 8, 2009, the Court dismissed the Movant's Motion
9 for Relief from Stay, without prejudice, because a separate proof
10 of service had not been filed.

11 11. From the Movant's previous Motions for Relief from Stay,
12 judicial notice whereof is requested, it is clear that there is no
13 equity in Debtor's real property and that the Movant is not
14 adequately protected.

15 11. As in the prior Chapter 13 case, the Debtor again failed
16 to file required documents, and, on July 27, 2009, a Minute Order
17 was entered, confirming that this Chapter 7 case had been
18 previously dismissed on July 21, 2009, pursuant to 11 USC Section
19 521(i).

20 12. On July 27, 2009, Debtor, NATALIE ELAINE PIERCE, filed
21 this Chapter 7 case.

22 13. Michael D. Dacquisto has been appointed as the interim
23 Chapter 7 Trustee, and the Section 341 Meeting of Creditors is now
24 scheduled to occur on September 23, 2009, at 8:00 a.m.

25 14. Pursuant to 11 USC Section 362(c)(3)(C) and (II)(a), the
26 pending Chapter 7 case is presumptively filed not in good faith as
27
28

1 to all creditors, (I) since more than 1 previous under any of
2 chapters 7, 11 and 13 in which the individual was a debtor was
3 pending within the preceding 1-year period, and (II) a previous
4 case under any of chapters 7, 11 and 13 in which the individual
5 was a debtor was dismissed within such 1-year period, after the
6 debtor failed to (aa) file or amend the petition or other
7 documents required by this title or the court without substantial
8 excuse.

9 15. Pursuant to 11 USC Section 362(c)(4)(A)(i) and (ii), if
10 a single or joint case is filed by or against a debtor who is an
11 individual under this title, and if 2 or more single or joint
12 cases of the debtor were pending within the previous year but were
13 dismiss ... the stay shall not go into effect upon the filing of the
14 later case; and (iii) on request of a party in interest, the court
15 shall promptly enter an order confirming that no stay is in
16 effect.

17 16. The circumstances defined in the Bankruptcy Code
18 sections cited in the preceding paragraphs 14 and 15 of this
19 Motion pertain and apply directly to this case.

20 WHEREFORE, Movant moves this Court to enter an order
21 decreeing that no stay is in effect in this case; or, in addition
22 thereto, or in the alternative, that the Court terminate the
23 automatic stay, if any exists, as to Movant and permit him to
24 conclude his foreclosure sale against, and obtain possession of,
25 the debtors real property above described;

26 Movant further prays that the provisions of the Federal Rules
27
28

1 of Bankruptcy Procedure Rule 4001(a)(3) be waived; and

2 Movant further prays that he be granted such further and
3 other relief as the Court deems just and proper.
4

5 Dated: August 14, 2008

LAW OFFICES OF DANIEL S. WEISS
Attorney for STEPHEN CRAIG GARICA

6
7 By: /s/Daniel S. Weiss
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28